



Cindy Littrell

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The loan modification process drags on, Martin says, and “all the while they are building up this amount of money in fees and missed payments that will eventually represent an insurmountable number.” If the customer doesn’t qualify for the loan after that, they may face as little as one month to pay that impossible cost before they’re foreclosed on.

State Rep. Paul Holvey has been working on lending-reform legislation for the past three or four years. Holvey says that between banks and different nominees and mortgage representatives, homeowners at times find themselves at an impasse simply figuring out which institution to talk to. Sometimes they pick the wrong one and get bad information.

“This whole system has gotten so packaged and sliced and diced and sold on the secondary market that nobody seems to be responsible for servicing the loan,” he says.

## MERS & Illegal Foreclosures

Retiree Malcolm Berens says he didn’t know much about the foreclosure process until he was walking in his neighborhood in 2003 and was hit by a car driven by a process server delivering foreclosure papers. The incident left Berens

with a severely injured arm, ending his career as a pilot. It didn’t disrupt his mind in the slightest — the septuagenarian can recite the email addresses and phone numbers of people he works with faster than the world’s most obnoxious teen.

Since the accident, Berens’ attention has been focused on how to keep entities that don’t legally own home titles from foreclosing on homeowners.

At the center of the nationwide controversy is Mortgage Electronic Registration Systems (MERS), a company that operates a private database of property information and is often a bank’s appointee to facilitate the foreclosure.

Legally, the MERS runs into trouble because Oregon law (ORS 86.735) requires the name of the entity foreclosing to be on the home’s deed, similar to how car ownership works, Berens says.

Judge Frank Alley’s February 2011 ruling in Oregon Bankruptcy Court in Eugene concluded that naming MERS a beneficiary in a trust deed doesn’t make it so — because the law that requires proper record-keeping isn’t satisfied.

Locally, the MERS problem isn’t a rare one. *EW* looked at 2012 foreclosures in Lane County, among them 67 notices of default from Feb. 15 to March 1. A search for references to MERS in the paperwork revealed that about 47.8 percent, 32 of the 67 notices, had clear mentions of MERS.

Berens says MERS was created in part to allow banks to bypass the small fees associated with deed transfers. He estimates that since MERS was created in 1995, Lane County could have lost as much as \$48 million in the fees it was owed as properties were transferred without the legally required documentation.

Now Berens travels to different locations throughout the country, advocating for the public and attempting to stop MERS-related foreclosures. He uses money from his own trusts to work with homeowners requesting his help.

Berens says he follows the law to the letter, “facilitating a method so the bank cannot argue.” He and his lawyers offer to buy the mortgage from the bank, but they request proper documentation. If the foreclosing entity hasn’t been adequately registered, the bank can’t sell the mortgage to Berens, but they can’t proceed with the foreclosure, either.

## Oregon’s Legislation

As the foreclosure crisis enters its fifth year, advances are finally evident on the legislative front. State Rep. Holvey has been trying for three or four years now to pass legislation that would protect consumers and regulate banks. He says he’s proud of what the legislation has finally accomplished, but remains frustrated at the number of years, failed bills and political battles it’s taken to achieve something.

Senate Bill 1552, passed on March 5, requires that lending institutions meet their clients for face-to-face mediation with a third party. It also ends the “dual track” process of foreclosure, which occurs when lenders foreclose on customers who are in the process of seeking a loan modification.

Holvey says, “It requires the banks to come to the table, which is one of the big issues that housing counselors and homeowners have been having.”

According to Martin from Economic Fairness Oregon, requiring banks to sit down with their customers has been done before.

“We’ve seen these programs in other states, and — where they are structured well — 50 percent of the time, people who enter mediation walk out of the door having avoided foreclosure through some other option,” Martin says, though “not always through loan modification, and they don’t always stay in the home, but they’re always better off.”

Right now, Martin says the challenge is ensuring that homeowners know they have legal access to mediation, so they can use it before they’re so deep in debt and confusion it’s too late. “It doesn’t do a lot of good to homeowners to have a right to mediation if they don’t know it exists,” Martin says.

The recent legislation addresses the problems with dual track and the right to mediation, but the MERS problem is being litigated in courts across the country, with several Oregon cases featuring prominently. Judge Alley’s MERS decision in Eugene last year made headlines nationwide, and U.S. District Court Judge Michael Simon did so again

on Feb. 29, ruling that lenders must file a notice with the county, in accordance with state law.

Some critics complain that MERS is intertwined with too many loans to be deemed legally invalid.

State Reps. Matt Wand of Troutdale and Gene Whisnant of Sunriver introduced an amendment that would have made MERS’ failure to publicly record retroactively legal. The amendment failed.

Holvey says that although MERS is big, it’s in trouble because it broke the law. He contends that it is a tool used to shirk the responsibility of processing the chain of title, and the role it played on the market helped contribute to the current economic collapse.

“It is a mess, but it’s not a mess that should be straightened out at the expense of homeowners, and that was our position,” Holvey says. “We shouldn’t just be bailing the lending industry out of the mess they created.”

## Local Support

Helping consumers get the information and strategies they need to consider could be difficult. Part of the new legislation’s mission might be achieved using money that’s coming from a multi-state foreclosure settlement, which is dedicated to foreclosure relief programs.

Springfield’s Neighborhood Economic Development Corporation (NEDCO) already offers a “Default Intervention Workshop,” and sets homeowners up with foreclosure counselors.

Amateurs are taking up the fight, too. A foreclosure working group affiliated with Occupy Eugene has been working on self-education since December, according to group member Reid Kimball. The group had just five days to work with Lauren Schickling, who was trying to save her family’s 73-acre country property near Walton after her lawyer dropped the case just before the auction date.

After filing for a temporary restraining order (TRO) against Bank of America at 8:30 am, Schickling received the order to halt the sale just before her property was to be auctioned at 10 am. Kimball says the TRO came in so late that they had to rush to the would-be auction and give the injunction to the auctioneer.

Kimball speaks like a chess player or an anthropologist, discussing strategy and tactics with calm reason. He doesn’t own a home, and he says that in the beginning the foreclosure crisis seemed foreign to him. The entire foreclosure working group is studying hard to navigate a morass of detail in fields different from their own, Kimball says.

He says he still isn’t sure which legal tool was more effective: asking for a TRO or demanding to see the note. But Kimball says that “we kind of gave them a taste of their own medicine” in pursuing dual strategies to prevent the foreclosure.

“We’ve only helped a handful of people,” Kimball says, but the group is noticing that more and more people are asking for help. “I think we’re going to get real busy in the next few months.”

Kimball asks that anyone who would like to get involved in Occupy Eugene’s foreclosure working group contact them at [OEBankBusters@gmail.com](mailto:OEBankBusters@gmail.com)

## Stuck in limbo

For now, Cindy Littrell and the step-grandchildren who just moved in with her are hoping that Berens’ plan, using his trust and demanding to see proper records, will save their home.

Even with all of the stress and major consequences that have befallen her, Littrell isn’t one to lose her temper or speak angrily. Since she understands she was never in the wrong, it’s hard for her to believe that she could have lost her home for following the bank’s advice. “I don’t know if they would have worked with me or not,” she says of the loan modification.

Littrell’s March 7 foreclosure date was delayed for a month after she went to court. She says she’s hoping that she’ll be allowed to simply keep making her mortgage payments and raise her grandkids.

After all, the bureaucracy that ensnared her wasn’t set in motion due to a voluntary lack of mortgage payments. “I was making my payments. I don’t have a problem with that, I never did.”

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